

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 5, 2003

IN RE:

APPLICATION OF GLH COMMUNICATIONS, INC.  
D/B/A CLEAR TALK TO BE DESIGNATED AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

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DOCKET NO.  
03-00255

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ORDER

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This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on April 24, 2003, for consideration of the *Application of GLH Communications, Inc. d/b/a Clear Talk To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on April 3, 2003.

**Background**

GLH Communications, Inc. d/b/a Clear Talk ("Clear Talk") is a commercial mobile radio service ("CMRS") provider seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Clear Talk asserts that it seeks ETC status for the entire study areas for which it is licensed by the Federal Communications Commission ("FCC") to provide wireless service. Clear Talk maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

**The April 24, 2003 Authority Conference**

During the regularly scheduled Authority Conference on April 24, 2003, the panel of Directors assigned to this docket deliberated Clear Talk's *Application*. Of foremost consideration

of the Authority's jurisdiction. The panel unanimously found that the Authority lacked jurisdiction over Clear Talk for federal universal service ETC designation purposes.<sup>1</sup>

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."<sup>2</sup>

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of interstate universal service. Where common carriers seeking interstate universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the FCC to perform the ETC designation.<sup>3</sup>

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<sup>1</sup> This finding is not inconsistent with the Authority's decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state.

<sup>2</sup> Tenn. Code Ann. § 65-4-104.

<sup>3</sup> 47 U.S.C. §214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

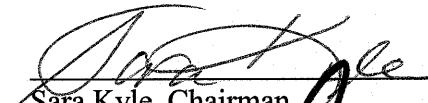
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

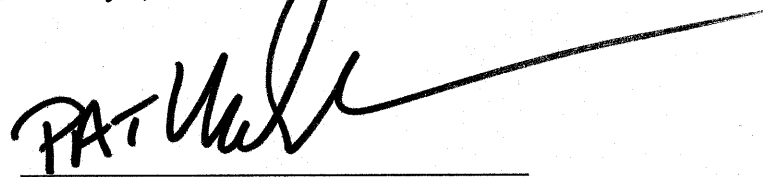
As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."<sup>4</sup> Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."<sup>5</sup>

The panel noted that the FCC is the appropriate forum for Clear Talk to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

**IT IS THEREFORE ORDERED THAT:**

*The Application of GLH Communications, Inc. d/b/a Clear Talk To Be Designated As An Eligible Telecommunications Carrier* is dismissed for lack of jurisdiction.

  
Sara Kyle, Chairman

  
Pat Miller, Director

  
Ron Jones, Director

<sup>4</sup> *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

<sup>5</sup> *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")